

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION

CRIMINAL NO. 2:05CR201

UNITED STATES OF AMERICA,)	<u>ORDER</u> <u>OF GARNISHMENT</u>
)	
Plaintiff,)	
)	
vs.)	
)	
GARY DEAN SMITH,)	
)	
Defendant,)	
)	
and)	
)	
EASTERN BAND OF CHEROKEE)	
INDIANS,)	
)	
Garnishee,)	
)	

THIS MATTER is before the Court on the *pro se* motion of Defendant which requests the Court to reconsider its Order of March 13, 2008.

Defendant's Motion Under Federal Rule of Civil Procedure 59(e), filed April 1, 2008. That Order denied Defendant's motions to quash or vacate the previous writ of garnishment entered herein on January 28, 2008.

Order, filed March 13, 2008, at 4-5. This writ of garnishment, in turn, provided for the garnishment of Defendant's *per capita* distribution of

gaming revenues from the Eastern Band of Cherokee Indians (“the Tribe”).

Writ of Continuing Garnishment, filed January 28, 2008. For the reasons stated below, Defendant’s motion is denied. The Court’s final order of garnishment is incorporated herein.

Following a March 2005 altercation with his girlfriend in which shots were fired, Defendant pled guilty to possession of a firearm by a felon and agreed to pay restitution. **Rule 11 Inquiry and Order of Acceptance of Plea, filed May 31, 2005; Plea Agreement, filed May 19, 2005, ¶ 7;** **Criminal Complaint, filed May 5, 2005.** He received an active sentence, a period of supervised release, and an instruction to pay \$6,800.00 in restitution to his girlfriend, Mignon Parker, in connection with his crime.

Judgment in a Criminal Case, filed May 11, 2006, at 2-4. The basis for this restitution amount was set forth in Defendant’s presentence report as follows:

A Victim Impact Statement was received from Mignon Parker, the victim in this case. She indicated that her loss amount as a result of this offense was \$6,800. This amount consists of \$1,800 for unreimbursed property loss and \$5,000 miscellaneous. These are amounts that were ordered under a Domestic Violence Protective Order on April 26, 2005 in Tribal Court in Cherokee, North Carolina.

Presentence Investigation Report, revised February 3, 2006, at 5. The Judgment also directed Defendant to pay a \$100.00 assessment, for a grand total of \$6,900.00. **Judgment, *supra*, at 4.**

In the instant motion, Defendant suggests that the Government may not garnish Defendant's *per capita* distribution of gaming revenues because the Court's final judgment orders Defendant to make installment payments of \$200.00 per month after he is released from prison. **Motion of April 1, 2008, *supra*, at 3-4.** However, federal statutes specifically provide for the type of garnishment sought by the Government.

A court may issue a writ of garnishment against property (including nonexempt disposable earnings) in which the debtor has a substantial nonexempt interest and which is in the possession, custody, or control of a person other than the debtor, in order to satisfy the judgment against the debtor.

18 U.S.C. § 3205(a). For purposes of this garnishment statute, a "debtor" is "a person who is liable for a debt or against whom there is a claim for a debt"; and a "debt" is defined, in part, as "an amount that is owing to the United States on account of a . . . restitution." *Id. § 3002(3), (4).* Thus, the Court's final judgment of May 11, 2006, does not preclude the current garnishment proceedings. Indeed, that judgment noted specifically that payment of restitution was to commence immediately. **Judgment, *supra*,**

at 5. Defendant's motion to amend this Court's prior order enforcing the writ of garnishment must, therefore, be denied.

On January 25, 2008, the Government moved to garnish the Defendant's *per capita* distribution of gaming revenues from the Tribe, stating that Defendant's original judgment debt was \$6,900.00, against which \$175.00 had been credited, leaving a total balance of \$6,725.00. The Court has now overruled all ensuing objections by Defendant and by the Tribe.

IT IS, THEREFORE, ORDERED that an Order of Garnishment is hereby **ENTERED** in the amount of \$6,725.00, computed through January 25, 2008, which shall attach to each of the Tribe's *per capita* distributions of gaming revenues to Defendant.

IT IS FURTHER ORDERED that the Defendant's motion to reconsider is hereby **DENIED**.

Signed: April 10, 2008



Lacy H. Thornburg
United States District Judge

